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June 11, 1996

HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Petition For Rulemaking and Amendment of FM Table of Assignments,  
FM Table of Allotments, Section 73.202(b)  
Add Channel 300A, Alamogordo, NM

Dear Mr. Caton:

Transmitted herewith, on behalf of Burt Broadcasting, Inc., is an original and four copies of a "Petition for Rulemaking" to modify the FM Table of allotments and add FM Channel 300A to the Community of Alamogordo, New Mexico. Also enclosed for the Commission's convenience is a draft "Notice of Proposed Rulemaking" in connection with the Petition.

Please direct any questions concerning this filing to the undersigned.

Sincerely,



Kecia Boney

Enclosures

cc: Mr. John Karousos (courtesy copy)

084

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

JUN 11 1996

In the Matter of	)	MM Docket No. _____
	)	RM No. _____
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations	)	
(Alamogordo, New Mexico)	)	

To: Chief, Mass Media Bureau

**PETITION FOR RULE MAKING**

Burt Broadcasting, Inc. ("Burt Broadcasting"), pursuant to Section 1.401 of Commission's rules, hereby requests the Commission to amend the FM Table of Allotments set forth in Section 73.202(b) of the Commission's rules as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Alamogordo, New Mexico	232C3, 279C1, 287C2	232C3, 279C1, 287C2, 300A

In support of this request, the following is stated:

Burt Broadcasting proposes the allotment of Channel 300A to Alamogordo, New Mexico. Alamogordo is an incorporated city in south central New Mexico and is the County Seat of Otero County. The population of Alamogordo is growing steadily. For example, in 1970, the population was 23,035 and in 1990 Alamogordo had a population of 27,596.<sup>1</sup> Based on the expansion of residential and military housing in Alamogordo, the population will continue to increase. The proposed allotment of Channel 300A would provide the city with additional FM service.

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<sup>1</sup> U.S. Census (1990).

As demonstrated in the attached engineering statement prepared by Kenneth L. Bass, Channel 300A can be allotted to the city of Alamogordo, New Mexico at an available transmitter site that will permit the construction of a facility to operate on Channel 300A in accordance with all of the signal contour requirements of Section 73.315 of the Commission's rules. The allotment meets the minimum separation requirements with respect to all known licenses, construction permits, open allotments, pending applications and pending rulemakings.

Burt Broadcasting intends to apply for a construction permit to build and operate a new facility promptly upon the grant of the petition authorizing the addition of Channel 300A.

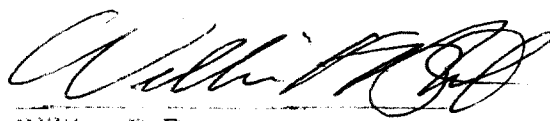
Correspondence may be directed to:

Nora E. Garrote, Esquire  
Piper & Marbury L.L.P.  
1200 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036

WHEREFORE, in light of the foregoing, Burt Broadcasting hereby requests that the Commission grant this petition for rulemaking, amend the FM Table of Allotments, and allot Channel 300A to Alamogordo, New Mexico

Respectfully submitted,

June 11, 1996



William F. Burt

**EXHIBITS IN SUPPORT OF A  
PETITION FOR RULEMAKING  
FOR AN FM ALLOCATION  
CH 300(A) - ALAMOGORDO, NEW MEXICO**

Alamogordo, N.M. is a city in south central New Mexico. It is the County Seat of Otero County. It was founded in 1898 as a repair center for the Southern Pacific Railroad. It was incorporated in 1912. It is situated in the Tularosa Basin in the foothills of the Sacramento Mountains. It is a trade center for ranching, vegetable-farming, fruit-growing, and a railroad shipping point for lumber from the mountains. Alamogordo has a thriving tourist trade. It is the home of the International Space Hall of Fame.

Nearby are the White Sands National Monument containing the largest gypsum dune field in the world, the Lincoln National Forest and the Village of Lincoln which was the site of the Lincoln County War that helped immortalize the outlaw, Billy the Kid, the Mescalero Indian Reservation, Prehistoric Indian Petroglyphs or rock drawings, Ruidoso Downs Race Track, Inn of the Mountain Gods Resort and Casino, Sunspot Observatory, a national center for ground-based solar observations; and many more sport and vacation attractions. Alamogordo is the seat of the Alamogordo Branch of New Mexico State University and the New Mexico School for the Visually Handicapped.

The population of Alamogordo, N.M. is growing steadily. U.S. Census figures show that it has grown from 23,035 in 1970, to 24,024 in 1980 and to 27,596 in 1990. That number continues to grow as evidenced by the booming residential housing construction business. This housing expansion is made necessary by three major factors.

(1) Alamogordo has become a popular retirement community. It has a healthful, dry climate with no smog. The moderate climate offers an average Winter daily high of 61.8 degrees and overnight average low of 32.4 degrees. In the Summer the average daily high is 91.3 degrees with a cool average nighttime low of 62.4 degrees. Annual rainfall is 11.24 inches with 4.5 inches being the average annual snowfall and snow seldom stays on the ground more than one or two days. There are no Earthquakes, Tornadoes, Hurricanes, Mudslides or Floods. As a result of the moderate climate, utility costs are moderate. Gerald Champion Memorial Hospital and a large compliment of Physicians, Surgeons and other medical professionals make this an ideal retirement community.

(2) Expansion of the nearby military community. Holloman Air Force Base is located adjacent to Alamogordo. While other military communities have suffered at the hands of base closings, Holloman Air Force Base has been expanding as the result of consolidations of units from other bases. In addition, the German Government is in the process of building a training base which is now staffed by 300 personnel plus dependents. That number is expected to grow to 950 plus dependents by 1999. The combined populations of these two military installations plus the White Sands Missile Range expand the population of the Alamogordo Trade Area to well in excess of 50 thousand persons.

(3) Items #1 and #2 above help contribute to a stable economy. In addition to the quality of living factors noted above, Alamogordo offers younger families many features and services. There is an excellent elementary and secondary school system.

There are many school, church and community based activities for youth. The level of violent crime is very low. As a result, many former military personnel return to make Alamogordo their home. Also, many younger families are moving here to escape the conditions in more metropolitan communities.

Three FM channels are now allocated to Alamogordo. Channel 232C3 is now licensed to KYEE Radio. Channel 279C1 is assigned to KHD which is an unbuilt CP currently requesting a major change and reduction to class C3. Channel 287C2 is an authorized substitution for Channel 288A which is now licensed to KZZX Radio.

Attached is Exhibit E 01 A B which displays that Channel 300A meets the requirement of FCC Para 207 Table A and C as regards minimum spacing between co-channel, adjacent-channel and IF channels. The method used to determine the spacing is that prescribed by FCC Para 208 (C) and International Agreements as applicable.

Exhibit E 01 A shows the separations based on the Geographic Coordinates for the City of Alamogordo, N.M. as taken from the publication entitled "United States Department of Interior Index of the National Atlas of the United States of America" in accordance with Para 73.208 (a) (1) (ii). It should be noted that while all required co, adjacent and IF channels exceed the minimum spacing requirements of Para 73.207 table A and C as applicable, the spacing between Alamogordo Ch 300A and Banderas, CH Ch 300C exceeds the minimum by only 2.19 km. As a result, a second Exhibit (Exhibit E 01 B)

was developed to show the spacing between the required channels with particular concern for the Banderas CH allocation, and an available transmitter site for Alamogordo Ch 300A. This available transmitter site will provide a spacing between these two communities of 216.95 km which is 6.95 km greater than the 210 km required. The available transmitter site will permit the construction of a facility to operate on Alamogordo Ch 300A which meets all of the signal contour requirements of FCC Para 73.315.

Attached as Exhibit E-02 is a statement of availability for the transmitter site used to develop Exhibit E-01-B. The owner of this site is Burt Broadcasting Inc., licensee of KYEE Radio, Alamogordo, N.M.. The statement of availability indicates that this site will be available on a lease basis to any subsequent licensee of any facility authorized on Alamogordo CH 300A. It is also noted that Burt Broadcasting Inc. intends to apply for a Construction Permit to build and operate a facility on Alamogordo Ch 300A provided subsequent Rulemaking by the FCC authorized said channel.

This Exhibit in Support of Petition for Rulemaking has been prepared in accordance with the Rules and Regulations of the Federal Communications Commission by Kenneth L. Bass, Broadcast Consultant. An affidavit of Qualification is attached as Exhibit E-03. Questions or comments may be addressed to Kenneth L. Bass, Broadcast Consultant, P.O. Box 1109, Alamogordo, NM 88311-1109. Phone 505-439-8318.

**Petition for Rulemaking  
FM Allocation Ch. 300A  
Alamogordo, NM  
Exhibit E 01 A/B**

Exhibit E 01 A - ALAMOGORDO, NM (FCC Community Coordinates)  
Latitude 32-54-00 Longitude 105-57-24

Channel 300A (107.9 MHz) Table of Separations

Call	Location	Chan	Class	Freq	Lat	Long	Bearing	Dist	Req.	OK/Short
KBCQ	Roswell, NM	246	C1	97.1	332405	1042245	69.30	157.33	22	OK
NEW	Pecos, TX	247	C1	97.3	313054	1031125	120.49	302.68	22	OK
KKSS	Santa Fe, NM	247	C	97.3	354650	1063135	350.68	323.80	29	OK
K297AE	Ruidoso, NM	297	FT	107.3	332404	1054655	16.26	58.20	31	OK
XHNZ	C. Juarez, CH	298	C	107.5	314410	1062915	200.30	137.90	105	OK
KSMX	Clovis, NM	298	C1	107.5	341134	1031644	60.04	287.07	75	OK
KEFE	Los Alamos, NM	298	C3	107.5	355947	1055349	0.92	343.52	42	OK
ALOC	Chihuahua, CH	299	B	107.7	283812	1060442	181.40	472.80	105	OK
KQLM	Odessa, TX	299	C2	107.7	313640	1022259	112.10	365.80	106	OK
ALOC	Banderas, CH	300	C	107.9	310049	1053445	170.32	212.19	210	OK
KTEG	Albq., NM	300	C	107.9	354650	1063135	349.95	260.44	226	OK

Exhibit E 01 B - ALAMOGORDO, NM (Existing FCC approved Transmitter Site)  
Latitude 32-56-42 Longitude 105-56-47

Channel 300A (107.9 MHz) Table of Separations

Call	Location	Chan	Class	Freq	Lat	Long	Bearing	Dist	Req.	OK/Short
KBCQ	Roswell, NM	246	C1	97.1	332405	1042245	70.90	154.69	22	OK
NEW	Pecos, TX	247	C1	97.3	313054	1031125	121.40	304.36	22	OK
KKSS	Santa Fe, NM	247	C	97.3	354650	1063135	350.37	319.03	29	OK
K297AE	Ruidoso, NM	297	FT	107.3	332404	1054655	16.77	53.14	31	OK
XHNZ	C. Juarez, CH	298	C	107.5	314410	1062915	199.96	142.92	105	OK
KSMX	Clovis, NM	298	C1	107.5	341134	1031644	60.81	283.72	75	OK
KEFE	Los Alamos, NM	298	C3	107.5	355947	1055349	0.77	338.51	42	OK
ALOC	Chihuahua, CH	299	B	107.7	283812	1060442	181.51	477.72	105	OK
KQLM	Odessa, TX	299	C2	107.7	313640	1022259	113.78	366.80	106	OK
ALOC	Banderas, CH	300	C	107.9	310049	1053445	170.79	216.95	210	OK
KTEG	Albq., NM	300	C	107.9	354650	1063135	349.54	255.70	226	OK



# AFFIDAVIT

Donnie L Burt  
Notary Public  
My Commission expires 11/21/97

EXHIBIT: E 03  
Petition for Rulemaking  
Alamogordo Ch. 300A

**AFFIDAVIT**

Sate of New Mexico    )  
                                  ) ss:  
County of Otero        )

Kenneth L. Bass, after being duly sworn, deposes and states that;

He is a Professional Broadcast Contract Engineer in the State of New Mexico;

He is the holder of General Radiotelephone Operator License #PG-17-9825 issued by the Federal Communications Commission January 2, 1985 as replacement for Radio Telephone First Class License #P1-17-22332;

He has been a professional broadcaster since 1962 and has served in the position of Chief Engineer at several and various AM and FM broadcast stations in Missouri and New Mexico;

He is owner and principal operator of Kenneth L. Bass, Broadcast Consultants and has served as Contract Engineer for many stations in Missouri and New Mexico for many years;

His qualifications are a matter of record, and prior filings with the Federal Communications Commission have received favorable attention;

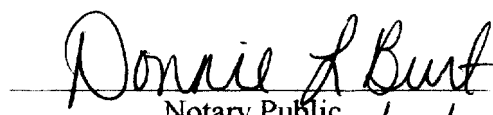
The attached Engineering Exhibit was prepared by him and;

The facts stated herein are true, complete, and correct to the best of his knowledge and belief.

  
Kenneth L. Bass  
Broadcast Consultant

Subscribed and sworn to before me this 30th day of April, 1996

( SEAL )

  
Notary Public  
My Commission expires: 1/21/97

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
(Alamogordo, New Mexico)

)  
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**MM Docket No.** \_\_\_\_\_  
**RM No.** \_\_\_\_\_

**NOTICE OF PROPOSED RULE MAKING**

Adopted:

Released:

Comment Date:

Reply Comment Date:

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rulemaking filed by Burt Broadcasting, Inc. ("petitioner") requesting the allotment of Channel 300A to Alamogordo, New Mexico, as additional FM service for the community. If allotted, the petitioner will apply for the channel.

2. We believe petitioner's proposal warrants consideration because the allotment of Channel 300A would provide Alamogordo with additional radio service. Channel 300A can be allotted to the community at an available site in compliance with the Commission's minimum distance separation requirements.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments. Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Channel No.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Alamogordo, New Mexico	232C3, 279C1, 287C2	232C3, 279C1, 287C2, 300A

4. The Commission's authority to institute rulemaking proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before \_\_\_\_, 1996, and reply comments on or before \_\_\_\_, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Nora E. Garrote, Esquire  
Piper & Marbury L.L.P.  
1200 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact \_\_\_\_\_, Mass Media Bureau, (202) 418-\_\_\_\_\_. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are

permitted from that time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 306(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commissioner's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rules Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponents(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in the proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished to the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.